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Duquesne University of the Holy Spirit and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO, CLC
Case 06-CA-197492

February 28, 2018

DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS PEARCE
AND EMANUEL

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on April 24, 2017 by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO, CLC (the Union), on May 8, 2017, the General Counsel issued the complaint alleging that Duquesne University of the Holy Spirit (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain following the Union's certification in Case 06-RC-080933. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer and an amended answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On May 26, 2017, the General Counsel filed a Motion for Summary Judgment. On May 31, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Regional Director for Region 6's certification of the Union on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the Board lacks jurisdiction over the Respondent, a Catholic university, pursuant to *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), and that the Board's test for asserting its jurisdiction, as set forth in *Pacific Lutheran University*, 361 NLRB 1404 (2014), constitutes an unconstitutional intrusion into the Respondent's religious liberty.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following Findings of Fact

I. JURISDICTION

At all material times, the Respondent has been a Pennsylvania corporation engaged in the operation of a private, nonprofit university of higher education.²

During the 12-month period ending March 31, 2017, in conducting its operations described above, the Respondent derived gross revenues in excess of \$1 million, and purchased and received at the Respondent's facility, products, goods, and materials valued in excess of \$50,000 directly from points located outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7), and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held by mail ballot between June 22, 2012 and July 9, 2012, in which a majority of the employees voted for the Union, the Regional Director for Region 6 certified the Union³ on

¹ Chairman Kaplan and Member Emanuel did not participate in the underlying representation proceeding. They express no opinion on the merits of the Board's decision in that proceeding or on whether *Pacific Lutheran University*, 361 NLRB 1404 (2014), was correctly decided. Nonetheless, they agree that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding and that summary judgment is appropriate, with the parties retaining their respective rights to litigate relevant issues on appeal.

² In its amended answer, the Respondent denies the complaint allegation that it has been, at all material times, "a Pennsylvania corporation with its sole facility in Pittsburgh, Pennsylvania [and] has been operating a private nonprofit university of higher education." However, in its amended answer, it admits that "it is organized as a Pennsylvania Membership Corporation, maintains its sole facility in Pittsburgh, Pennsylvania, and operates a private, Catholic nonprofit university of higher education."

³ By unpublished Order dated April 10, 2017, the Board issued an Order excluding part-time adjunct faculty in the department of theology

April 19, 2017, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All part-time adjunct faculty employed by the Employer in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all Department of Theology part-time adjunct faculty, all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

By letter dated April 19, 2017, the Union requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit employees. Since about April 21, 2017, the Respondent has failed and refused to do so.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing, since April 21, 2017, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785, 787 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226,

229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Duquesne University of the Holy Spirit, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO, CLC (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All part-time adjunct faculty employed by the Employer in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all Department of Theology part-time adjunct faculty, all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such

from the unit found appropriate and denied the Respondent's request for review in all other aspects. *Duquesne University of the Holy Spirit*, 06-RC-080933, 2017 WL 1330294.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 21, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 6 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February, 28, 2018

Marvin E. Kaplan, Chairman

Mark Gaston Pearce, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO, CLC (the Union) as

the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

All part-time adjunct faculty employed by us in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all Department of Theology part-time adjunct faculty, all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

DUQUESNE UNIVERSITY OF THE HOLY SPIRIT

The Board's decision can be found at <https://www.nlrb.gov/case/06-CA-197492> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

